



Supreme Court, U. S.

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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-577

CORVALLIS SAND AND GRAVEL COMPANY,
an Oregon corporation,

Petitioner,

v.

**STATE OF OREGON, Acting by and
through the State Land Board,**

Respondent.

**BRIEF FOR RESPONDENT STATE OF OREGON
IN OPPOSITION TO THE PETITION FOR
CERTIORARI OF THE CORVALLIS
SAND AND GRAVEL COMPANY**

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Respondent State of Oregon in principle opposes the petition of the Corvallis Sand and Gravel Company for the reasons hereinafter noted. Notwithstanding these reasons Respondent urges the Court to take jurisdiction of the petition (as well as of the petition in Case No. 75-567) to put to rest, for once and for all, the questions raised by the language of this Court in *Bonelli Cattle Co. v. Arizona*, 414 U.S. 313 (1973).

OPINIONS BELOW

The opinions and facts pertaining thereto are adequately set forth in the petition and appendix thereto of the State of Oregon in Case No. 75-567.

QUESTIONS PRESENTED FOR REVIEW

Respondent concurs in petitioner's Statement of the Questions.

STATEMENT OF FACTS

Respondent concurs in petitioner's Statement of the Facts.

ARGUMENT

THE DECISION BELOW WAS CORRECT

Petitioner relies on *Bonelli Cattle Co.*, 414 U.S. 313 (1973) for the proposition that the State of Oregon has no proprietary interest in its navigable river beds sufficient to support an action for ejectment in the absence of allegations and proof that the respondent by its actions was interfering with public navigation, fishing and related uses. Petitioner also contends that the state's title is only a sovereign interest to protect navigation and commerce and does not constitute a proprietary interest in its riverbeds. Therefore, even if such an interference had been alleged, the state would in no event be entitled to damages for defendant's taking of sand and gravel from the riverbed. The language of the Court in the *Bonelli* case has led to this contention (and to other litigation in the state challenging the existence of a disposable property interest in the state's title to its navigable riverbeds).

We submit it is clear, however, that the state has a *complete* fee simple title in the beds of its navigable waterways which is defeasible only by reliction of the water from the bed and subject only to the overriding powers of the United States to control navigation and commerce. Because of this fact, the state has a sufficient proprietary interest in its navigable riverbeds to permit royalty leases for the removal of sand and gravel and other minerals from such beds, to sell parcels of such beds (providing public navigation and commerce are not thereby obstructed), and finally to lease parcels in such beds for private uses and purposes. *See: Hardin v. Jordan*, 140 U.S. 371, 402 (1891); *Illinois Central R. Co. v. Illinois*, 146 U.S. 387, 452-453 (1892); *Shively v. Bowlby*, 152 U.S. 1, 43, 46-47, 48-50 (1893), *United States v. Holt State Bank*, 270 U.S. 49, 54-55 (1926), *United States v. Oregon*, 295 U.S. 1, 14 (1935), *Bonelli Cattle Co. v. Arizona*, 414 U.S. 313, 319-320 (1973), *Workman v. Boone & Kingsbury*, 206 Cal. 148, 273 P. 797 (1928), *cert. den.* 280 U.S. 517 (1929).

ALTHOUGH THE DECISION BELOW WAS
CORRECT, THE COURT SHOULD TAKE JURISDIC-
TION OF THE IMPORTANT FEDERAL QUESTION
RAISED IN THIS CASE IN CONJUNCTION WITH
THE IMPORTANT FEDERAL QUESTION
RAISED IN CASE NO. 75-567 TO RESOLVE
THE SERIOUS AMBIGUITIES RAISED BY
THE BONELLI DECISION

It should be apparent by now that the questions before this Court in Case No. 75-567 and in this case (No. 75-577) are but two sides of the same coin. This case (No. 75-577) raises the question whether the state has a disposable property interest in its navigable riverbeds. If the state does have such an interest, then Case No. 75-567 raises the question whether this Court's rule of avulsion as applied in the *Corvallis* case (No. 75-567) is not in fact so unworkable, that as a practical matter the state cannot enjoy its proprietary interest. In a nutshell, if the rule of avulsion requires constant and complex litigation to establish public ownership, the state's proprietary interest is of little value.

CONCLUSION

We think the Oregon courts correctly decided the federal question of the state's right to damages in the ejectment case because the state does in fact have a disposable property interest in its navigable riverbeds. However, that question is too important to be resolved on a denial of certiorari. And, as noted by the petitioner in Case No. 75-567 and by the petitioner in this case the Court's language in *Bonelli* raised far more serious questions than it answered. The Court should therefore take jurisdiction of the petitions in both cases and put those questions to rest.

Respectfully submitted,

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